

3.3.5 Threatened and Endangered Species

This section discusses threatened and endangered (T/E) species, as well as designated critical habitat with the potential to occur within the BSA, and it summarizes agency consultation conducted to date and the NES, which was completed in August 2011 and revised in March 2012.

3.3.5.1 Regulatory Setting

The primary federal law protecting T/E species is the FESA: 16 U.S.C., Section 1531, *et seq.* (see also 50 CFR Part 402). This act and later amendments provide for the conservation of T/E species and the ecosystems upon which they depend. Under Section 7 of this act, federal agencies, such as FHWA, are required to consult with USFWS and NOAA Fisheries Service to ensure that they are not undertaking, funding, permitting, or authorizing actions likely to jeopardize the continued existence of listed species or destroy or adversely modify designated critical habitat. Critical habitat is defined as geographic locations critical to the existence of a T/E species. The outcome of consultation under Section 7 may include a Biological Opinion with an Incidental Take Statement, a Letter of Concurrence, and/or documentation of a No Effect finding. Section 3 of FESA defines take as “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or any attempt at such conduct.”

California has enacted a similar law at the state level, the CESA, CFGC Section 2050, *et seq.* CESA emphasizes early consultation to avoid potential impacts to rare, endangered, and threatened species and to develop appropriate planning to offset project-caused losses of listed species populations and their essential habitats. CDFW is the agency responsible for implementing CESA. Section 2081 of the CFGC prohibits “take” of any species determined to be an endangered species or a threatened species. Take is defined in Section 86 of the CFGC as “hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill.” CESA allows for take incidental to otherwise lawful development projects; for these actions, an incidental take permit is issued by CDFW. For species listed under both FESA and CESA requiring a Biological Opinion under Section 7 of the FESA, CDFW may also authorize impacts to CESA species by issuing a Consistency Determination under Section 2080.1 of the CFGC.

Another federal law, the Magnuson-Stevens Fishery Conservation and Management Act of 1976, was established to conserve and manage fishery resources found off the coast, as well as anadromous species and Continental Shelf fishery resources of the United States, by exercising (A) sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish within the exclusive economic zone established by Presidential Proclamation 5030, dated March

10, 1983, and (B) exclusive fishery management authority beyond the exclusive economic zone over such anadromous species, Continental Shelf fishery resources, and fishery resources in special areas.

3.3.5.2 Affected Environment

Databases containing records of reported occurrences of federally or state-listed endangered, threatened, proposed endangered, or threatened species; California Species of Special Concern (CSC); or otherwise special-status species or habitat that may occur within or in the immediate vicinity of the BSA were reviewed. In addition, in June 2009, USFWS provided Caltrans a list of proposed, threatened and endangered species and critical habitat within and adjacent to the BSA. The letter and list are provided in Appendix O. In June 2011, Caltrans requested an updated list of proposed, threatened and endangered species and critical habitat within and adjacent to the BSA, and it has also been included in Appendix F of the NES. Furthermore, in October 2014, Caltrans obtained an updated species list from the USFWS on-line Information Planning and Conservation System (IPaC), and has also been included in Appendix O.

Tables 3.3.5-1 and 3.3.5-2 show the 15 T/E species identified in the USFWS letters and/or the database review as occurring or potentially occurring in the BSA and/or the surrounding area. These species may also be state listed as threatened or endangered.

As established in the NES, no federal- or state-listed T/E species are present in the BSA. Of the 15 threatened, endangered, and candidate plant and animal species listed that may occur in the BSA, none were observed during surveys of the BSA. All 5 plant species were determined to lack either suitable habitat or distribution in the BSA and are considered to be absent from the BSA at this time. Those species are Ventura marsh milk-vetch (*Astragalus pycnostachyus* var. *lanosissimus*), salt marsh bird's-beak (*Cordylanthus maritimus* ssp. *maritimus*), Laguna Beach dudleya (*Dudleya stolonifera*), Gambel's water cress (*Nasturtium gambelii*), and California orcutt grass (*Orcuttia californica*). All 10 animal species were determined to lack either suitable habitat or distribution in the BSA and are considered to be absent from the BSA at this time. Those species are vernal pool fairy shrimp (*Branchinecta lynchi*), green sea turtle (*Chelonias Mydas*), western snowy plover (*Charadrius alexandrinus nivosus*), western yellow-billed cuckoo (*Coccyzus americanus occidentalis*), California black rail (*Laterallus jamaicensis coturniculus*), Belding's savannah sparrow (*Passerculus sandwichensis belingi*), coastal California gnatcatcher (*Polioptila californica californica*) light-footed clapper rail (*Rallus longirostris levipes*), California least tern (*Sternula antillarum browni*), and least Bell's vireo (*Vireo bellii pusillus*).

Table 3.3.5-1: Summary of Threatened and Endangered Plant Species

Scientific Name Common Name	Status	General Habitat Description	Habitat Present (HP) or Absent (A)	Rationale
<i>Astragalus pycnostachyus</i> var. <i>lanosissimus</i> Ventura marsh milk-vetch	FE SE CNPS: List 1B.1	Perennial herb. Occurs in coastal dunes and edges of coastal salt marshes and swamps. Up to 115 ft in elevation. Flowering season is June through October.	A	Species distribution is restricted by substantive habitat requirements, which do not occur or are negligible within the BSA, and no further survey or study is obligatory to determine likely presence or absence of this species.
<i>Cordylanthus maritimus</i> ssp. <i>Maritimus</i> Salt marsh bird's-beak	FE SE CNPS: List 1B.2	Hemiparasitic annual herb. Occurs in coastal dunes and coastal salt marshes and swamps. Up to 100 ft in elevation. Flowering season is May through October.	A	Species distribution is restricted by substantive habitat requirements, which do not occur or are negligible within the BSA, and no further survey or study is obligatory to determine likely presence or absence of this species.
<i>Dudleya stolonifera</i> Laguna Beach dudleya	FT ST CNPS: List 1B.1	Stoloniferous perennial herb. Occurs in coastal scrub, chaparral, cismontane woodland, and valley and foothill grassland on rocky soils. Endemic to Orange County. From 30 to 850 ft in elevation. Flowering season is May through July.	A	Species distribution is restricted by substantive habitat requirements, which do not occur or are negligible within the BSA, and no further survey or study is obligatory to determine likely presence or absence of this species.
<i>Nasturtium gambelii</i> Gambel's water cress	FE ST CNPS: List 1B.1	Rhizomatous perennial herb. Occurs in freshwater or brackish marshes and swamps. From 15 to 1,085 ft in elevation. Flowering season is April through September.	A	Species distribution is restricted by substantive habitat requirements, which do not occur or are negligible within the BSA, and no further survey or study is obligatory to determine likely presence or absence of this species.
<i>Orcuttia californica</i> California Orcutt grass	FE SE CNPS: List 1B.1	Annual herb. Occurs in vernal pools. From 50 to 2,165 ft in elevation. Flowering season is April through August.	A	Species distribution is restricted by substantive habitat requirements, which do not occur or are negligible within the BSA, and no further survey or study is obligatory to determine likely presence or absence of this species.
STATUS CODES FEDERAL Federal Endangered Species Act FE Federal Endangered FT Federal Threatened STATE California Endangered Species Act SE State Endangered ST State Threatened		California Native Plant Society (CNPS) Classifications 1A Plants Presumed Extinct in California 1B Plants Rare, Threatened, or Endangered in California and Elsewhere 2 Plants Rare, Threatened, or Endangered in California, But More Common Elsewhere 3 Plants About Which We Need More Information - A Review List 4 Plants of Limited Distribution - A Watch List Threat Code 0.1 Seriously threatened in California (high degree/immediacy of threat) 0.2 Fairly threatened in California (moderate degree/immediacy of threat) 0.3 Not threatened in California (low degree/immediacy of threats or no current threats known)		

Source: URS 2012.

Table 3.3.5-2: Summary of Threatened and Endangered Wildlife Species

Scientific Name Common Name	Status	General Habitat Description	Habitat Present (P) or Absent (A)	Rationale
INSECTS				
<i>Branchinecta lynchi</i> Vernal pool fairy shrimp	FT	Endemic to the grasslands of the Central Valley, central coast mountains, and south coast mountains in vernal pools.	A	Species distribution is restricted by substantive habitat requirements, which do not occur or are negligible within the BSA, and no further survey or study is obligatory to determine likely presence or absence of this species.
REPTILES				
<i>Chelonias Mydas</i> Green sea turtle	FT	Generally found in fairly shallow waters (except when migrating) inside reefs, bays, and inlets. The turtles are attracted to lagoons and shoals with an abundance of marine grass and algae. Open beaches with a sloping platform and minimal disturbance are required for nesting.	A	Species distribution is restricted by substantive habitat requirements, which do not occur or are negligible within the BSA, and no further survey or study is obligatory to determine likely presence or absence of this species.
BIRDS				
<i>Charadrius alexandrinus nivosus</i> Western snowy plover	FT	(Nesting). Occurs on sandy beaches, salt pond levees, and shores of large alkali lakes. Requires sandy, gravelly, or friable soils for nesting. The federal listing applies only to the Pacific coastal population.	A	Species distribution is restricted by substantive habitat requirements, which do not occur or are negligible within the BSA, and no further survey or study is obligatory to determine likely presence or absence of this species.
<i>Coccyzus americanus occidentalis</i> Western yellow-billed cuckoo	SE	Riparian forest nester, along the broad, lower flood-bottoms of larger river systems. Also prefers thickets of willow mixed with cottonwood.	A	Species distribution is restricted by substantive habitat requirements, which do not occur or are negligible within the BSA, and no further survey or study is obligatory to determine likely presence or absence of this species.
<i>Laterallus jamaicensis coturniculus</i> California black rail	ST	Inhabits saltwater, freshwater, and brackish marshes bordering larger bays at low elevations.	A	Species distribution is restricted by substantive habitat requirements, which do not occur or are negligible within the BSA, and no further survey or study is obligatory to determine likely presence or absence of this species.
<i>Passerculus sandwichensis belingi</i> Belding's savannah sparrow	SE	Occurs from Santa Barbara to San Diego county. Nests in pickleweed on and around the margins of tidal flats.	A	Species distribution is restricted by substantive habitat requirements, which do not occur or are negligible within the BSA, and no further survey or study is obligatory to determine likely presence or absence of this species.

Table 3.3.5-2: Summary of Threatened and Endangered Wildlife Species

Scientific Name Common Name	Status	General Habitat Description	Habitat Present (P) or Absent (A)	Rationale
<i>Poliophtila californica californica</i> Coastal California gnatcatcher	FT SSC	Obligate, permanent resident of coastal sage scrub below 2,500 ft. in southern California.	A	Species distribution is restricted by substantive habitat requirements, which do not occur or are negligible within the BSA, and no further survey or study is obligatory to determine likely presence or absence of this species.
<i>Rallus longirostris levipes</i> Light-footed clapper rail	FE SE	Inhabits salt marshes traversed by tidal sloughs, where cordgrass and pickleweed are the dominant vegetation.	A	Species distribution is restricted by substantive habitat requirements, which do not occur or are negligible within the BSA, and no further survey or study is obligatory to determine likely presence or absence of this species.
<i>Sternula antillarum browni</i> California least tern	FE SE	Nests along the coast on bare or sparsely vegetated, flat substrates such as sandy beaches, alkali flats, landfills, or paved areas.	A	Species distribution is restricted by substantive habitat requirements, which do not occur or are negligible within the BSA, and no further survey or study is obligatory to determine likely presence or absence of this species.
<i>Vireo bellii pusillus</i> Least Bell's vireo	FE SE	Occurs in low riparian growth in vicinity of water, or in dry river bottoms, below 2,000 ft. Nests placed along margins of bushes or on twigs projecting into pathways, usually willow, mule fat, and mesquite.	A	Species distribution is restricted by substantive habitat requirements, which do not occur or are negligible within the BSA, and no further survey or study is obligatory to determine likely presence or absence of this species.
STATUS CODES FEDERAL Federal Endangered Species Act FE Federal Endangered FT Federal Threatened STATE California Endangered Species Act SE State Endangered ST State Threatened CDFW Code SSC California Species of Special Concern -- Other				

Source: URS 2012.

3.3.5.3 Environmental Consequences

Effect Determination

Caltrans has made a No Effect determination for all federally threatened and endangered species. The finding of “No Effect” was consistent with each species listed on the USFWS species list. There is no designated critical habitat within the project area and species’ distribution is restricted by degraded habitat.

Permanent Impacts

No Build Alternative

The No Build Alternative proposes no construction or other disturbance in the BSA; therefore, the No Build Alternative would result in no adverse impacts related to T/E species.

Build Alternatives

There are no state or federal T/E-listed species in the BSA; therefore, no long-term or permanent impacts to T/E species are anticipated as a result of the project. There is no critical habitat in the BSA.

Temporary Impacts

No Build Alternative

The No Build Alternative does not propose any construction or other disturbance in the BSA; therefore, the No Build Alternative would result in no adverse impacts related to T/E species.

Build Alternatives

There are no state or federal T/E-listed species in the BSA; therefore, no temporary impacts to T/E species are anticipated as a result of the project. There is no critical habitat in the BSA.

3.3.5.4 Avoidance, Minimization, and/or Mitigation Measures

There are no federal or state T/E species within the BSA. The project is not anticipated to permanently, temporarily, directly, or indirectly affect T/E species; therefore, no avoidance, minimization, and/or mitigation measures are proposed.